

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

FILED

NOV 28 2012

CLERK, U.S. DISTRICT COURT

By

Deputy

LEVI WOODERTS Jr.  
(BOP No. 29639-077  
and TDCJ No. 549210)

VS.

KAREN SUMMERS, et al.

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CIVIL NO.4:12-CV-196-A(BJ)

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

In this case, plaintiff/appellant Levi Wooderts Jr. has filed a motion for leave to proceed *in forma pauperis* on appeal. Resolution of the motion was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b). The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

This case is on appeal from the Court's dismissal of Levi Wooderts Jr.'s civil case.

B. PARTIES

Levi Wooderts Jr. is the plaintiff/appellant. The case was dismissed before service upon any of the named defendants.

C. LEGAL ANALYSIS

On November 16, plaintiff/appellant Wooderts filed an application/motion for leave to proceed *in forma pauperis* (IFP) on appeal. The Court has referred the motion to the undersigned. In

*Donaldson v. Ducote*, 373 F.3d 622, 624-25 (5<sup>th</sup> Cir. 2004), the United States Court of Appeals for the Fifth Circuit *sua sponte* found that it did not have jurisdiction to review a magistrate judge's order denying an appellant's motion for leave to proceed *in forma pauperis* on appeal and certifying that the appeal was not taken in good faith. Appellant had not consented to the magistrate judge's ruling on his right to appeal *in forma pauperis*, and he had not been afforded the opportunity to object to the magistrate judge's recommendation. *Id.* at 624-25. Thus, the court of appeals remanded the case to the district judge "for the limited purpose of reviewing the magistrate judge's certification that [appellant's] appeal is not taken in good faith and entering an appropriate order." *Id.* at 625. Guided by the logic of *Ducote*, the undersigned has considered Wooderts's motion for leave to proceed *in forma pauperis* on appeal through this report and recommendation procedure, with time provided for appellant to submit objections.

The motion for leave to proceed *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915 should be denied. This appeal is from the disposition of a civil action which is subject to the fee provisions of the Prison Litigation Reform Act. Court records reveal, however, that Wooderts, as a result of previously filing frivolous suits, is barred from proceeding under 28 U.S.C. § 1915 in any civil action or appeal filed while he is incarcerated or detained unless he is under imminent danger of serious physical

injury.<sup>1</sup> Wooderts obtained the qualifying dismissals in this the United States District Court for the Northern District of Texas, and in the United States District Courts for the Western and Southern Districts of Texas.<sup>2</sup> In this case, Wooderts has not set forth grounds for leave to file in compliance with 28 U.S.C. § 1915(g).

RECOMMENDATION

It is therefore RECOMMENDED that plaintiff/appellant Levi Wooderts Jr.'s November 16, 2012 motion/application to proceed in forma pauperis on appeal (docket nos. 14) be DENIED.

NOTICE OF RIGHT TO OBJECT TO PROPOSED  
FINDINGS, CONCLUSIONS AND RECOMMENDATION  
AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 10 days after being served with a copy.

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<sup>1</sup> As a result of the Prison Litigation Reform Act (PLRA) amendments to 28 U.S.C. 1915, section 1915(g) provides that a prisoner may not proceed in forma pauperis in a civil action if, on three or more occasions, the prisoner had a case dismissed as frivolous, malicious, or for failure to state a claim, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C.A. § 1915(g) (West 2006).

<sup>2</sup>See *Levi Wooderts Jr. v. United States*, No.4:10-CV-423-Y (N.D.Tex. September 16, 2011)(Order and Judgment summarily dismissing case under 28 U.S.C. §§ 1915A and 1915(e)(2)(b)); *Wooderts v. Talley, et al.*, No. 4:03-CV-048-RAJ G-04-071 (W.D. Tex. March 7, 2005 Order Adopting report and recommendation to dismiss some claims for failing to state a claim upon which relief could be granted), *aff'd*, *Wooderts v. Talley*, No. 05-50424 (5<sup>th</sup> Cir. 2006); *Wooderts v. Stephens, et. al.*, No. H-02-2117 (S.D.Tex. June 11, 2002)(Order and Judgment dismissing case with prejudice under 28 U.S.C. 1915(e)(2)(B)).

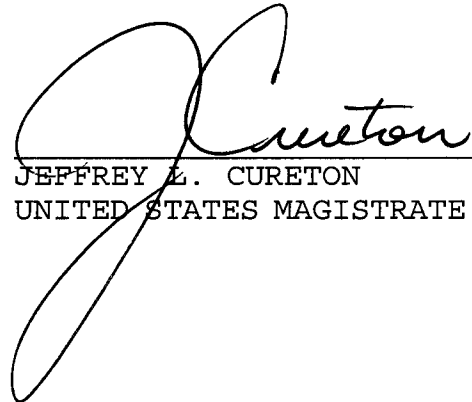
See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court is extending the deadline within which to file specific written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation until December 19, 2012. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual finding and legal conclusion if it has been accepted by the United States District Judge. See *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is ORDERED that Plaintiff is granted until December 19, 2012 to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge, be and is hereby, returned to the docket of the United States District Judge.

SIGNED November 28, 2012.



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JEFFREY L. CURETON  
UNITED STATES MAGISTRATE JUDGE